UNITED
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AT

Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 780

Case No. 854: MAIA-SAMPAIO Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Luis de Posadas Montero, Vice-President, presiding; Mr. Mikuin Leliel Balanda; Mr. Francis Spain;

Whereas, at the request of Leonor Maia-Sampaio, a staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, successively extended to 31 January and 30 April 1995, the time-limit for the filing of an application with the Tribunal;

Whereas, on 13 April 1995, the Applicant filed an application requesting the Tribunal to order:

> "1. Retroactive reclassification of [her] post and implementation of her promotion as of that date.
>
> 2. Compensation in an amount equal to one year's salary for the delay in carrying out the above."

Whereas the Respondent filed his answer on 6 November 1995;

Whereas the Applicant filed written observations on 10 May 1996, in which she further requested the Tribunal to order:

> "...
>
> (b) The award of exemplary damages that would discourage the Administration from similar attempts at discriminatory manipulation of the classification of posts."

Whereas, on 12 September 1996, the Applicant filed an additional document with the Tribunal;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 28 January 1970, as Associate Librarian in the Department of Conference Services, on a three-month fixed-term appointment at the P-2, step I level. Her appointment was successively extended for periods of eight months, two months, ten months and one year. On 1 July 1973, she was granted a probationary appointment, and on 1 April 1974, a permanent appointment. On this date, the Applicant was transferred to the Division of Human Rights in Geneva. On 1 April 1977, she was promoted to the P-3 level. On 17 May 1980, the Applicant was transferred back to Headquarters as Secretary, Advisory Board on Compensation Claims, in the Office of Financial Services. On 1 April 1983, she was promoted to the P-4 level. On 1 September 1987, the Applicant was reassigned to the Central Evaluation Unit (CEU), as Budget Officer. The Applicant was assigned to Geneva on 14 January 1989, as Programme Budget Officer in the Special Procedures Section of the Centre for Human Rights. She returned to Headquarters on 1 July 1990, as Evaluation Officer, CEU, Department of Administration and Management (DAM).

In April 1991, the Applicant prepared a request for reclassification to the P-5 level of the P-4 post of Programme Officer, UNA-28833-E-P-4-001, which she encumbered. The request was approved by the Chief, CEU/DAM, and forwarded to the Executive Office, DAM.

On 19 July 1991, the Acting Executive Officer, DAM, returned the request for classification on the grounds that no provision for such reclassification had been included in the proposed 1992-1993 programme budget. She noted that unless an existing P-5 post could be identified to implement the reclassification, DAM could not support the request.

On 19 August 1991, the Acting Executive Officer, DAM, sent a memorandum to the Applicant in which she stated, inter alia:

> "[S]ince the Chief of the Compensation and Classification Service has confirmed that his office is unable to entertain a request of this nature, which is not accompanied by a specifically identified higher level post which can be substituted for the P-4 post under consideration, ... the Department is ... unable to support your request for re-classification."

On 28 August 1991, the Applicant requested the Secretary-General for a review of the decision not to transmit her request for reclassification to the Office of Human Resources Management (OHRM). On 30 October 1991, the Applicant filed an appeal against that decision with the Joint Appeals Board (JAB). The JAB adopted its report on 12 May 1992. Its considerations, findings, and recommendation read, in part, as follows:

> "Considerations
>
> 36. The Panel observed that this case did arise from an appeal against an administrative decision not to forward to the Compensation and Classification Service the Appellant's request for reclassification of her post to the P-5 level in spite of the fact that her request had been endorsed by her Director.
>
> 37. The Panel observed that the contested decision was based on the memorandum, dated 16 August 1988, from the Assistant Secretary-General, OHRM, to the Heads of Departments and Offices, on administrative instruction ST/AI/277, dated 10 November 1980, and on administrative circular ST/IC/81/13, dated 4 March 1981.
>
> ...
>
> 40. The Panel ... found that ... while the Executive Office considered that the request could not be forwarded to the Compensation and Classification Service, the Administrative Review Unit did not hesitate to transmit it to that service for their comments. In addition, the Executive Office and

the Administrative Review Unit did not base the contested decision on the same criteria.

41. The Panel could not, therefore, escape the impression that the Appellant had been denied due process.

42. At the same time, the recommendation of the Panel is in no way intended to preclude, or substitute for, the forthcoming judgement of the Compensation and Classification Service on substantive issues such as evaluation and comparison of job descriptions contained in requests for reclassification.

Conclusions and Recommendation

44. The Panel unanimously

(a) Finds that the contested decision was based on a memorandum which had not been circulated to staff members and on administrative issuances which lack in clarity;

(b) Finds that there exist inconsistencies in the Administration's approach and criteria used in the present case;

(c) Finds therefore that the Appellant was deprived of due process.

45. Consequently, the Panel unanimously recommends that the Appellant's request for reclassification be forwarded to the Compensation and Classification Service, in accordance with the usual procedure.

46. The Panel makes no further recommendation in support of the appeal."

On 10 June 1992, the Assistant Secretary-General, OHRM, informed the Applicant as follows: "The Secretary-General ... has decided to accept its [the JAB] recommendation that your request for reclassification be forwarded to the Compensation and Classification Service, which is requested to proceed with the classification of your post".

On 16 March 1993, the Chief, Compensation and Classification Service, informed the Controller, Office of Programme Planning,

Budget and Finance, that the Compensation and Classification Service had conducted a classification review of the post in question and concluded that its reclassification from the P-4 to the P-5 level was not warranted. He noted that the Applicant could appeal the classification decision.

On 3 June 1993, the Applicant appealed to the Acting Director of OHRM against the classification of her post at the P-4 level.

On 5 October 1993, the Applicant was informed by the Director of Personnel, OHRM, that the Classification Appeals and Review Committee (CARC) had been constituted.

On 18 February 1994, the Secretary of the CARC sent the Applicant a copy of the report on the classification of her post prepared by the Compensation and Classification Service and submitted to the CARC. On 7 March 1994, the Applicant submitted her comments thereon to the CARC.

On 7 July 1994, the Director of Personnel, OHRM, transmitted to the Applicant the CARC report which recommended that the classification decision with respect to her post be maintained. She informed the Applicant that she approved the CARC's recommendation.

On 13 April 1995, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contention is:

The classification of the Applicant's post has been tainted by prejudice, which is evidenced by the minimization of the ratings given to her functions. If the Applicant's functions had been fully credited, her post would have been classified at the P-5 level.

Whereas the Respondent's principal contentions are:

1. The Applicant's appeal against the classification of her post was properly considered by the CARC, which accorded due process to the Applicant. The CARC delivered a reasoned recommendation. Its acceptance did not violate the Applicant's rights.

2. The decision not to reclassify the post in question was not vitiated by extraneous factors.

The Tribunal, having deliberated from 25 October to 21 November 1996, now pronounces the following judgement:

I. The Tribunal emphasizes that the only matter under consideration is the decision not to classify the Applicant's post at the P-5 level, which was communicated to her by the Director of Personnel, Office of Human Resources Managment, on 7 July 1994.

Initially, the Applicant had submitted a recourse against the Administration's decision not to process her request for the reclassification of her post. This recourse had a favourable outcome for the Applicant, since the Secretary-General accepted the Joint Appeals Board (JAB) recommendation that her request be granted. This closed one aspect of the case.

II. Accordingly, the reclassification process was initiated. As a result, the competent organs recommended that the post should be classified at the P-4 level. The Secretary-General accepted the recommendation. The Applicant now contests his decision.

The Tribunal recalls its constant jurisprudence that the classification of posts is a matter for the discretion of the Secretary-General. The Tribunal does not consider itself competent to intervene, but will consider whether the classification process has been vitiated by prejudice, procedural irregularities or other extraneous factors.

III. The Applicant has challenged the outcome of the classification exercise on different grounds. In her submission to the Classification Appeals and Review Committee (CARC), dated 7 March 1994, the Applicant challenges the classification at the P-4

level, alleging that it is "inaccurate because the entire approach is mechanistic. It totally ignores the particular way the Evaluation Unit functions". In support of her allegation, she quotes the then Director of the Evaluation and Management Services Division, who, in a 1989 memorandum states that "all members of the CEU [Central Evaluation Unit] participate in all the functions of the Unit. The differences in grade levels are related directly to the degree of initiative expected and inversely to the amount of supervision and guidance required." Later on, in her submission to the Tribunal, she claims that there would appear to be no standards for posts in the CEU and that "the only consistent rationale in the Appellant's case is to have the ratings fall short of the need for reclassification to P-5." This, according to the Applicant, was achieved through the reduction of the relevant ratings.

The Applicant also claims that "there is a post in the same unit classified at the P-5 level which carries the same functions as [the Applicant's] and for which no document justifying the classification at that level is available."

IV. It is the Tribunal's task to determine whether these allegations constitute sufficient evidence that the classification process was tainted by prejudice, lack of due process or other extraneous factors.

In this respect, the Tribunal finds that there is no evidence of lack of due process. The report by the CARC dated 5 July 1994, in which the post was finally graded at the P-4 level, is sufficiently explicit and shows no evidence of arbitrariness.

As for the allegation by the Applicant that there is a post identical to hers, which has been classified at the P-5 level, the Tribunal recalls that classification of posts is carried out by reviewing each given post against the master standard for classification of professional posts adopted by the International Civil Service Commission and not by comparing one post to another.

As for the argument that the classification review did not sufficiently take into consideration the particular aspects of the CEU, the Tribunal reiterates that it is only competent to determine the existence of prejudice, arbitrariness, or other extraneous factors. Such possibilities having been excluded, the Tribunal shall not address this point.

V. For the foregoing reasons, the application is rejected in its entirety.

(Signatures)

Luis de POSADAS MONTERO
Vice-President, presiding

Mikuin Leliel BALANDA
Member

Frank SPAIN
Member

New York, 21 November 1996

R. Maria VICIEN-MILBURN
Executive Secretary